



The Uruguay Round and Agriculture: Charting a New Direction?

[T]he results of the negotiations provide a framework for the long term reform of agricultural trade and domestic policies over the years to come. It makes a decisive move towards the objective of increased market orientation in agricultural trade. The rules governing agricultural trade are strengthened which will lead to improved predictability and stability in importing and exporting countries alike.¹

The GATT Secretariat thus described the results of the Uruguay Round negotiations on agriculture. The specific results of these negotiations were an Agreement on Agriculture, a range of concessions and commitments by the contracting parties in relation to market access, an Agreement on Sanitary and Phytosanitary Measures, and a Ministerial Decision concerning Least-Developed and Net Food-Importing Developing Countries. This article examines the specific results of the negotiations, concentrating on the Agreement on Agriculture, in order to determine whether the assessment made by the GATT Secretariat is accurate.

In order to carry out this assessment it is necessary to examine the history of the GATT² as it relates to agriculture and the actual conduct of the negotiations. Only after such an examination is it possible to assess the “success” of the latest round of multilateral trade negotiations and to determine whether it does indeed “chart a new direction for agriculture.”³

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1. NEWS OF THE URUGUAY ROUND, NUR 080, Dec. 14, 1993, at 8 (GATT Secretariat, Geneva, Switzerland).

2. GENERAL AGREEMENT ON TARIFFS AND TRADE, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. No. 1700, 55 U.N.T.S. 194 [hereinafter GATT].

3. GATT FOCUS, Dec. 1993, at 3. The Australian representative provided this description of the outcome of the Uruguay Round negotiations.

I. The GATT and Agriculture—Before the Uruguay Round

In any analysis of the history of the GATT as it relates to agriculture, it is apposite to recall the conclusion of Warley on this matter:

[A]gricultural trade liberalization is an area in which the GATT has had meagre success.

...

However, this is not because there is anything fundamentally deficient in the GATT as a legal document as it pertains to agriculture. . . . What [is] missing above all else . . . [is a] willingness on the part of virtually all important member countries to allow agriculture to be subject to the same rules and "travel the same route at the same speed" as industrial products.⁴

One may verify this conclusion by looking to the application of various GATT articles to disputes between the contracting parties; to the attitudes of the major contracting parties, the European Community, and the United States; and to attempts to influence their domestic agricultural policies.

A. GATT ARTICLES

Two particular GATT articles are examined: article XI on Quantitative Restrictions and article XVI on Subsidies. According to the first paragraph of article XI, quantitative restrictions on imports of any product from another contracting party, whatever their method of operation, are not permissible. However, an exception is contained in paragraph 2 of article XI allowing for import restrictions necessary for the enforcement of any governmental measure that aims (a) to restrict the marketing or production of a like domestic product; or if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or (b) to remove a temporary surplus of a like or directly substitutable product by making it available to certain consumers either free or below current market price; or (c) to restrict the quantities permitted to be produced of any animal production where that production is directly dependent on the imported product, if domestic production of that product is negligible.⁵

A number of constraints, such as notice of restrictions, are imposed on the contracting party wishing to avail itself of paragraph 2 so as to avoid that paragraph's being used for protectionist purposes.⁶ Article XIII, which requires that any quantitative restrictions imposed be applied in a nondiscriminatory manner, further constrains such use.

4. T.K. Warley, *Western Trade in Agricultural Products*, in 1 INTERNATIONAL ECONOMIC RELATIONS OF THE WESTERN WORLD 1959-1971, at 287, 352-53 (Andrew Shonfield ed., 1976).

5. GATT, *supra* note 2, art. XI:2(c)(i)-(iii).

6. As an example of the constraint imposed on a contracting party wishing to use article XI:2, any restriction under paragraph 2(a) must not reduce the total of imports relative to domestic production "as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions." *Id.*

Although a number of disputes have involved article XI, one of the more significant was a complaint by the United States concerning the European Community's arrangements for the imports of certain processed fruits and vegetables.⁷ These arrangements involved a minimum import price, an import licence, and system of surety deposits for the import of tomato concentrates. The U.S. complaint was that the establishment of a minimum import price violated paragraph 1 of article XI as did the other measures that restricted trade.⁸ The response of the European Community was to admit that these measures did fall within paragraph 1 of article XI, but were exempt from complaint by virtue of paragraph 2(c) of that article.⁹ However, as there was no domestic limitation on the production of the fresh produce that would be rendered ineffective by the importation of the processed product, the European Community appeared unlikely to succeed on this argument. Indeed, the panel established to resolve the dispute found that the measures complained of breached paragraph 1 and were not exempted under paragraph 2.¹⁰ As a result, the United States had a *prima facie* case of nullification or impairment of the benefits accruing to it under the GATT.

Although the dispute serves to emphasize that article XI cannot be used for protectionist purposes, it also illustrates the lengths to which some contracting parties will go to protect their domestic producers. These nontariff barriers were successfully challenged, but a significant number of similar barriers escaped such scrutiny.¹¹ Such barriers pose a significant threat to the free flow of international trade and negotiations to eliminate this threat have been difficult. Hillman concluded, before the conclusion of the Tokyo Round Agreement on Technical Barriers to Trade, that part of this difficulty stems from the reasoning behind the imposition of such measures.

It is essential to any GATT negotiations that all participants recognize the nature of the disease they are trying to cure, so that too much time and energy won't be spent dealing with symptoms. National domestic policies are the root cause of agricultural protection and for the interference in the free flow of international trade.¹²

The Uruguay Round Agreement on Agriculture, by tackling the root of the problem, should, therefore, lead to greater progress in this area than could be

7. GATT BASIC INSTRUMENTS AND SELECTED DOCUMENTS (25th Supp.) at 68 (1979) [hereafter BISD].

8. *Id.* at 74-78.

9. *Id.* at 78-79.

10. *Id.* at 95-107. The panel doubted whether fresh tomatoes could be classified as a like domestic product, and even if they could, "the intervention system for fresh tomatoes did not qualify as a governmental measure which operated 'to restrict the quantities of the like domestic product permitted to be marketed or produced'." *Id.* at 103.

11. For a more general discussion, see JIMMYE S. HILLMAN, *NON-TARIFF AGRICULTURAL TRADE BARRIERS* (1978). In relation to GATT attempts to come to terms with the problem posed by such barriers before the Uruguay Round, see BISD, *supra* note 5, (20th Supp.) at 19 (1972) (Tokyo Round Declaration on nontariff barriers); BISD, *supra* note 7, (26th Supp.) at 8 (1980) (Tokyo Round Agreement on Technical Barriers to Trade).

12. HILLMAN, *supra* note 11, at 192.

achieved by the extension and clarification of the Tokyo Round Agreement on Technical Barriers to Trade acting on its own.¹³ One final point about the above dispute merits attention, namely that as article XI cannot be used for protectionist purposes, the contracting parties have moved outside the discipline provided by the GATT by imposing illegal quantitative restrictions. Such restrictions, in the form of Voluntary Restraint Agreements or Orderly Marketing Arrangements, constitute a clear breach of the antidiscrimination obligation of the GATT. The proliferation of these measures, sometimes referred to as "grey area" measures, will be subject to greater international discipline as a result of the negotiation and conclusion of an Agreement on Safeguards in the Uruguay Round.

Article XI is capable of applying to agriculture, yet in the effort to afford protection to domestic producers, some contracting parties have breached the discipline imposed by this provision. The additional obligations in articles XIII and XIX have not led to greater discipline. A similar picture emerges in relation to the other GATT provision to be discussed—article XVI. This article, which deals with exports of products with the assistance of subsidies, provides in paragraph 3:

[C]ontracting parties should seek to avoid the use of subsidies on the export of primary products. If, however, a contracting party grants directly or indirectly any form of subsidy which operates to increase the export of any primary product from its territory, such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product, account being taken of the shares of the contracting parties in such trade in the product during a previous representative period, and any special factors which may have affected or may be affecting such trade in the product.¹⁴

This particular paragraph gives rise to a significant number of problems, particularly in relation to the definition of the terms used.¹⁵ Moreover, to be successful any complainant will have to show the existence of a causal connection between the grant of the subsidy and the acquisition of more than an equitable share of world trade. Given these difficulties, an effort was made during the Tokyo Round to deal with the definitional problems inherent in article XVI:3 in the Code on Subsidies and Countervailing Duties. Article 10(2) defined "equitable share" as including "any case in which the effect of an export subsidy . . . is to displace the exports of another signatory bearing in mind developments on world markets."¹⁶

13. The Uruguay Round Agreement on Technical Barriers to Trade extends and clarifies the Tokyo Round Agreement in this area, in particular by making the disciplines of the Code more precise.

14. GATT, *supra* note 2, art. XVI:3.

15. For example, what is "more than an equitable share of world export trade"? See BISD, *supra* note 7, (7th Supp.) at 46 (1959), for a discussion of this point in the context of an Australian complaint about French exports of wheat flour.

16. Code on Subsidies and Countervailing Duties art. 10(2), BISD, *supra* note 7, (26th Supp.) 56, at 69 (1980).

The conclusions of the panel reports into the complaints made by Australia and Brazil about export refunds on sugar granted by the European Community illustrate the fact that this additional definition did not remedy the problems of article XVI:3.¹⁷ The panels could not conclude that the European Community had acquired more than an equitable share of world trade and, even if they could have, they would have struggled to demonstrate a causal connection between the increase in exports by the European Community and the decline in exports of the complainants.¹⁸ All that the panels could conclude was that the system operated by the European Community had depressed world sugar prices, indirectly causing prejudice to Australian and Brazilian interests.¹⁹ One further example illustrates the true nature of the problem in this area. The complaint by the United States concerning subsidies granted by the European Community to the export of wheat flour led to the first panel being established under the Code on Subsidies.²⁰ The panel report was as inconclusive as earlier reports in this area,²¹ but the content of the report is not the major problem here. Rather, under the Code on Subsidies panel reports must be considered as soon as possible so that recommendations can be made to resolve the dispute. Despite the fact that the panel report was made public in 1983, no action has yet been taken. The lack of respect so evident in the bypassing of articles XI and XIX through the use of "grey area" measures can also be found in the area of export subsidies.

However, there is a difference between the two provisions. In its discussion of the concept of more than an equitable share, the Leutwiler report stated:

We believe this concept is economically misconceived, since it impliedly endorses market-sharing. It is also too vague and subjective to permit clear judgment on whether a subsidy is acceptable or not—as was shown by the result of a US complaint to the GATT about European exports of subsidized flour. A better test of legitimacy than that of equitable share is needed for subsidies on primary products.²²

The contracting parties did not take the opportunity afforded by the Tokyo Round to define a "better test of legitimacy." Part of the reason for the missed opportunity is the attitude of the major contracting parties toward the GATT's attempts to influence the direction of their domestic agricultural policies.

17. BISD, *supra* note 7, (26th Supp.) at 290 (1980) (Australian complaint); BISD, *supra* note 7, (27th Supp.) at 69 (1981) (Brazilian complaint). As the findings of both panels are identical, further references relate only to the Australian complaint.

18. BISD, *supra* note 7, (26th Supp.) at 318 (1980).

19. *Id.* at 319. For a discussion of the aftermath of the complaint, see JOSEPH McMAHON, AGRICULTURAL TRADE, PROTECTIONISM AND THE PROBLEMS OF DEVELOPMENT: A LEGAL PERSPECTIVE 217-18 (1992).

20. The Australian and Brazilian complaints related to a period before the negotiation of the Code on Subsidies, but both Panels used the definitions that eventually made their way into the Code.

21. BISD, *supra* note 7, (29th Supp.) (1983); BISD, *supra* note 7, (31st Supp.) at 259 (1985). For further discussion, see Massimo Coccia, *Settlement of Disputes under the Subsidies Code: Two Panel Reports on E.E.C. Export Subsidies*, 16 GA. J. INT'L & COMP. L. 1, 17 (1986).

22. GATT, TRADE POLICIES FOR A BETTER FUTURE 40 (1985).

B. THE ATTITUDES OF THE CONTRACTING PARTIES

Warley identified the attitudes of the contracting parties as the primary factor for the meagre success of the GATT in relation to agriculture. The attitude of the two major contracting parties, the United States and the European Community, will help to illustrate the nature of the problem that confronted the GATT before the Uruguay Round and the magnitude of the agreement reached during that round.

The insertion of article XI in the GATT was an important victory for the United States as it legalized the retention of section 22 of the Agricultural Adjustment Act of 1933. The amendment of that Act in 1951 and its use against the import of dairy products placed the United States in breach of its GATT obligations. The United States, in an effort to ameliorate this situation, requested a waiver from its GATT obligations.²³ Despite attempts to restrict the scope of the waiver, the United States succeeded in getting an effective *carte blanche* to adopt the measures necessary to eliminate the causes of the situation that motivated the request for the waiver.²⁴ The only requirements imposed on the United States were that it remove the restrictions as soon as the circumstances allowed for it and that it report on the operation of the waiver.²⁵ By granting a waiver to the most important contracting party, at that time, the GATT did not help create the necessary circumstances to ensure the application of the rules of the GATT to agriculture.²⁶ The examination of the reports merely serve to underline the extent of the damage to the GATT.²⁷ Although a significant factor preventing the development of effective rules in the area of agriculture, it has not been the sole factor. The attitude of the European Community to the GATT is another important factor.

The contracting parties to the GATT had an opportunity to influence the nature of the agricultural policy to be adopted by the European Community when the Treaty of Rome was notified to the GATT. The working party established to examine the compatibility of the Treaty of Rome with the GATT divided its work into four subgroups, one of which dealt with the agricultural provisions of the Treaty

23. BISD, *supra* note 7, (3rd Supp.) at 32 (1955).

24. *Id.* at 141.

25. *Id.* at 34.

26. See Warley, *supra* note 4, at 347, who comments:

At a time when other exporters were highly agitated about agricultural trade restrictions, the architect of the trading system and the custodian of liberalism was itself giving primacy to national interests and demanding sanction for the use of a barrier which the agreement had set out to control and eliminate, namely quotas.

27. The 1984 review of the report noted that the waiver had: created a situation of serious imbalance in rights and obligations under the General Agreement. The inequity of this situation was even more serious because if other contracting parties applied restrictions on imports, they could always be challenged under Article XXIII proceedings which, while applicable, were not practicable with regards to restrictions applied by the United States under the waiver.

BISD, *supra* note 7, (30th Supp.) at 222 (1984).

of Rome.²⁸ The discussion within this subgroup focused on article XXIV:5(a), which, in essence, provides that the duties imposed at the beginning of a customs union should not be higher or more restrictive than those applied before the formation of the customs union. What concerned the subgroup was that the Treaty provisions on agriculture did not indicate how these articles would be applied. The subgroup reached no firm conclusions, but it did note that "The particular measures envisaged under the Treaty carried a strong presumption of increased external barriers and a substitution of new internal barriers in place of existing tariffs and other measures."²⁹

Having failed to influence the implementation of the agricultural policy of the European Community during the discussions in the working group, an indirect attempt was made to influence the development of that policy through the presentation of the Harberler Report. The mandate of the panel of experts included a request to examine the medium-term prospects for international trade in agricultural products.³⁰ It recommended a gradual moderation of agricultural protectionism through a shift away from price-support policies towards a system of deficiency payments.³¹ Instead of following the recommendations of the Harberler Report, the European Community based its agricultural policy on price support and external protection. As a result, a very protectionist policy emerged, and the European Community has consistently refused to acknowledge the protectionist effects of aspects of its agricultural policy.³²

The above review of the GATT articles and of the attitudes of the United States and the European Community towards the GATT reveal that the political will to allow agricultural trade liberalization to follow the same route as industrial trade has consistently been absent in the history of the GATT. Efforts to redress this problem in previous rounds of multilateral trade negotiations have failed, but the fourfold agreement reached on agriculture in the Uruguay Round promises that the future will be distinctly different from the past.

II. The Uruguay Round Negotiations

In relation to agriculture the Uruguay Round Declaration stated:

Contracting parties agree that there is an urgent need to bring more discipline and predictability to world agricultural trade by correcting and preventing restrictions and distortions . . . so as to reduce the uncertainty, imbalances and instability in world agricultural markets.

Negotiations shall aim to achieve greater liberalization of trade in agriculture and bring all measures affecting import access and export competition under strengthened

28. BISD, *supra* note 7, (6th Supp.) at 71 (1958).

29. *Id.* at 88.

30. GATT, TRENDS IN INTERNATIONAL TRADE 1 (1958).

31. *Id.* at 102.

32. See, for example, the attitude of the European Community towards the protectionist effects of the variable levy system. BISD, *supra* note 7, (30th Supp.) at 187 (1984).

and more operationally effective GATT rules and disciplines, taking into account the general principles governing the negotiations, by:

- (i) improving market access through, *inter alia*, the reduction of import barriers;
- (ii) improving the competitive environment by increasing discipline on the use of all direct and indirect subsidies and other measures affecting directly or indirectly agricultural trade, including the phased reduction of their negative effects and dealing with their causes;
- (iii) minimizing the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture, taking into account the relevant international agreements.³³

The Declaration is considerably more specific than the references to agriculture in either of the two previous rounds of multilateral trade negotiations, the Kennedy Round,³⁴ and the Tokyo Round.³⁵ One factor which ensured that the more positive declaration would actually lead to meaningful results was the ending of the duopoly that had characterized the previous rounds of negotiations. The emergence of the Cairns Group, made up of a group of thirteen developed and developing countries for whom agricultural trade was economically significant,³⁶ meant that the United States and the European Community would no longer totally dominate the negotiations.

The initial negotiating position of the Cairns Group provided for the establishment of a long-term framework that would go as far as possible towards the elimination of all export subsidies and import barriers. This long-term framework would be supported by either new or amended GATT rules and would be initiated by specific early relief measures—the so-called early harvest.³⁷ This initial negotiating position mirrored that of the United States, which called for the complete elimination over a ten-year period of all agricultural subsidies that affected international trade.³⁸ These negotiating positions, which sought to promote efficiency in the world market and to benefit efficient producers, were not well received by the European Community. Their negotiating position was that the negotiations should fall into two stages.³⁹ In the first stage, emergency measures would be taken to ease the strains in certain markets. These measures would take the form of international annual undertakings to ensure a more efficient functioning of

33. BISD, *supra* note 7, (33rd Supp.) at 24 (1987).

34. BISD, *supra* note 7, (12th Supp.) at 36 (1964). This declaration merely listed as one of the objectives for the negotiations the need to provide for "acceptable conditions of access to world markets for agricultural products." *Id.* at 48.

35. BISD, *supra* note 7, (20th Supp.) at 19 (1974). The aim of the negotiations in this round was even more general than that of the Kennedy Round; it provided for "an approach to negotiations which, while in line with the general objectives of the negotiations, should take account of the special characteristics and problems in this sector." *Id.* at 21.

36. The thirteen countries are Argentina, Australia, Brazil, Canada, Chile, Colombia, Hungary, Indonesia, Malaysia, New Zealand, the Philippines, Thailand, and Uruguay.

37. OECD, AGRICULTURAL POLICIES, MARKETS AND TRADE: MONITORING AND OUTLOOK 94 (1988).

38. *Id.* at 93.

39. EC BACKGROUND, No. 87/5, Annex II (1987).

certain markets (cereals, sugar, and milk products) and measures to prevent the exacerbation of existing market imbalances. In the second stage, the negotiating position of the European Community envisaged a concerted reduction in the level of market support and external protection. Over the longer term, these reductions would form the basis of further negotiations aimed at binding the levels of government support for agriculture.

The reconciliation of these divergent negotiating positions would not prove to be an easy process, and by the mid-term review of the round in Montreal in December 1988, it had not proved possible to achieve a reconciliation. A new deadline of April 1989 was set, and at this time the contracting parties were able to reach agreement on a framework for future negotiations.⁴⁰ This framework incorporated interrelated long- and short-term elements. The short-term element provided for a freeze on the existing levels of domestic and export support and protection through the adoption of specific policy measures or through the use of the concept of the aggregate measurement of support. Over the longer term the objective was the establishment of a fair and market-oriented agricultural trading system. The initial means to achieve this long-term objective was the negotiation of commitments on the support and protection of agricultural producers and the formulation of strengthened and more operationally effective GATT rules. These new rules would cover all measures, both direct and indirect, that affected import access and export competition; the harmonization of sanitary and phytosanitary regulations was also advocated over the longer term. The end product was to be "a substantial progressive reduction in agricultural support and protection sustained over an agreed period of time."⁴¹ The question left unresolved at this stage was the precise method for the elimination of agricultural support and protection. Differences would emerge on this issue as the contracting parties refined their initial negotiating positions.

The negotiating position of the Cairns Group considered that ten years was sufficient to effect the necessary reforms.⁴² Internal support measures were to be grouped into three categories. The first category was prohibited measures, which included measures that were not permitted by the GATT, such as variable levies, and measures that allowed for exceptional treatment, such as the U.S. waiver. The second and third categories were those measures that would be permitted subject to discipline or according to prescribed criteria. These measures would include direct income support not linked to the level of production. The aggregate measurement of support would be used to implement the obligation to eliminate trade distorting policies. To complete the process, all nontariff barriers would be converted into tariffs and be progressively reduced—a process referred to as tariffication. Some advantages of the tariffication are that tariffs are the

40. GATT Focus No. 61, May 1989, at 5.

41. *Id.* para. 6.

42. GATT Focus No. 68, Feb. 1990, at 5-6.

least trade-distortive import barriers, would help stabilize world market prices at a predictable level, and would generate revenue. However, the most significant advantage is that it would be easier to negotiate the reduction of tariff barriers than the reduction of nontariff barriers.

The United States, which made tariffication the core element of its negotiating position, identified these advantages.⁴³ In contrast to the position of the Cairns Group, the United States envisaged the conversion not only of nontariff barriers, but also of waivers and other exceptions permitting import restrictions (this latter category included Voluntary Restraint Agreements and Orderly Marketing Arrangements). All internal support policies—that is, price or income support policies linked to production—would be gradually phased out over a ten-year period. Like the threefold classification of such measures adopted by the Cairns Group, those internal policies not tied to production or marketing would be permitted. As was the case with the initial negotiating positions, the attitudes of both the Cairns Group and the United States towards the long-term objective of the reform of agricultural trade would lead to a guaranteed process of trade liberalization aimed at the promotion of efficiency. However, doubts were raised about the process of tariffication, especially by the European Community.⁴⁴

The centerpiece of the negotiating position of the European Community was not the concept of tariffication, but rather, the concept of the aggregate measurement of support. According to the European Community, agricultural support was to be calculated by measuring those elements considered as decisive in the farmer's decision to produce—the market support price, or direct payments, or both. The commitment to reduce support would be applied only to those products that were currently in surplus or where serious disruptions were likely to occur. Initial commitments would be made for a five-year period, with the possibility of the negotiation of further commitments from the fourth year of this period.⁴⁵ The position of the European Community can be contrasted with those of the Cairns Group and the United States. Whereas the latter's negotiating positions reflected the spirit of the mid-term review and hence the Uruguay Declaration, the position of the European Community involved a rebalancing of support.⁴⁶

43. GATT Focus No. 64, Aug./Sept. 1989, at 4.

44. GATT Focus No. 68, Feb. 1990, at 6. As an indication of the problems with the concept of tariffication, it was not clear how nontrade concerns, such as food security, which might motivate the imposition of nontariff barriers, could be accommodated within the concept. Equally, it is not certain whether all nontariff barriers can be converted into tariffs and, if they can, whether they be set at such a prohibitive level as to frustrate the process of trade liberalization.

45. GATT Focus No. 64, *supra* note 43, at 4.

46. The concept of the aggregate measurement of support was never well defined. The concept appeared to be based on the premise that the then-existing imbalances in the agricultural sector required governmental intervention on prices. As such, it failed to recognize that one of the causes of market imbalances was governmental intervention on prices. The aggregate measurement of support also involved establishing a fixed external reference price. The choice of reference years, therefore, became crucial as different years would yield different results and give rise to different obligations to reduce or rebalance the level of support.

This position was hardly consistent with the objective of reducing support and protection and did not bode well for the future of the negotiations.

It was obvious that a renewed impetus was necessary in order to reach a compromise between the differing negotiating positions of the contracting parties. Such an impetus emerged from the encouragement given by the Houston Summit of the Group of Seven in July 1990. The Group of Seven commended the text of the chair of the Agriculture Group, the de Zeeuw text, as the basis of intensifying the negotiations.⁴⁷ This text accommodated elements of all the negotiating positions discussed above. For example, commitments to reduce internal support measures would use the concept of the aggregate measurement of support. The concept of tariffication was employed by de Zeeuw as a means of alleviating the protectionist effects of border protection measures. The de Zeeuw text was later endorsed by the Trade Negotiations Committee of the GATT at its meeting in July 1990.⁴⁸ It appeared that a way had been found to reconcile the differences between the contracting parties and to ensure that the timetable set by the Trade Negotiating Committee to conclude the round would be met.

Although some contracting parties met the deadline of October 15, 1990, for the submission of their offers, others did not. It soon became obvious that the Brussels ministerial meeting, at which it was hoped to conclude the round, would not be successful. Attempts to reach a compromise on agriculture at this meeting failed; the deadlock could not be broken. The Brussels Ministerial meeting charged the chair of the Trade Negotiations Committee at the official level with the task of pursuing consultations with the objective of "achieving agreements in all the areas of the negotiating programme in which differences remain outstanding."⁴⁹ Negotiations would be reconvened at an appropriate date in the light of these consultations.⁵⁰ Eventually on February 26, 1991, the Trade Negotiations Committee at official level was able to announce the resumption of negotiations. The contracting parties agreed to open negotiations with the objective of giving specific commitments in the areas of domestic support, market access and export competition. The approach that was to be adopted was that adopted by the mid-term review in April 1989. The initial focus of the negotiations was on the following technical issues:

In the area of domestic support: a means of determining the policies that shall be excluded from the reduction commitment, the role and definition of an Aggregate Measurement of Support and equivalent commitments, a means of taking account of high levels of inflation faced by some participants, and the reinforcement of GATT rules and disciplines.

47. GATT Focus No. 76, Nov. 1990, at 1.

48. GATT Focus No. 72, July 1990, at 12.

49. GATT Focus No. 77, Dec. 1990, at 1.

50. It is important to note that agriculture was not the only area of disagreement at the Brussels ministerial meeting; other areas included trade-related investment measures, services and antidumping actions.

In the area of market access, the modality and scope of tariffication, the modalities of a special safeguard for agriculture, the scope and modalities of implementation of a minimum access commitment, the treatment of existing tariffs and the reinforcement of GATT rules and disciplines.

In the area of export competition: a definition of export subsidies to be subject to the terms of the final agreements including the development of means to avoid the circumvention of commitments whilst maintaining adequate levels of food aid and the reinforcement of GATT rules and disciplines.

In the area of phytosanitary measures, there is also scope for further refinement of a number of technical provisions and procedures.

In each of these particular areas the particular concerns of developing countries, of net food-importing developing countries, and those relating to food security will be examined.⁵¹

No final date was set for the conclusion of the negotiations, although it was hoped that the negotiations would be concluded by the end of 1991.

Although intensive work had been carried out using the framework agreed in February 1991 leading to the emergence of major elements of the reform package, it did not prove possible to complete the round in time for the forty-seventh session of the contracting parties in December 1991. However, in January 1992 the Trade Negotiations Committee agreed that the Draft Final Act tabled by the chair at the December meeting would form the basis for the completion of the negotiations. In addition, the committee adopted a four-track work plan as the basis for concluding the negotiations.⁵² Despite a promising start, the negotiations soon lost momentum, one of the factors being a difficulty in providing agricultural offers based on the concept of tariffication.⁵³ Once again, a renewed impetus to complete the round was necessary. This duly arrived in November 1992 when at a bilateral meeting the United States and the European Community reached an understanding on their differences with respect to agriculture.⁵⁴ Having resolved their differences on the issues of domestic support, export subsidies and market access, the United States and the European Community expressed the hope that the negotiations could be concluded by the end of 1992.⁵⁵ Once again this deadline would not be met.

During the early part of 1993 the negotiations drifted again towards stalemate. After the Group of Seven meeting in Tokyo in July 1993 negotiations were

51. GATT Focus No. 79, Mar. 1991, at 1-2.

52. GATT Focus No. 87, Jan./Feb. 1992, at 1-2. Track one consisted of intensive, nonstop bilateral, plurilateral, and multilateral negotiations on market access. Track two consisted of intensive nonstop negotiations, again with continuous multilateral monitoring on initial commitments in services. Track three consisted of work to ensure the legal conformity and internal consistency of the agreements constituting the Final Act. Track four consisted of work, at the level of the TNC, with a view to examining whether, and if, it is possible to adjust the package in certain specific places.

53. GATT Focus No. 89, Apr. 1992, at 8.

54. GATT Focus No. 95, Nov./Dec. 1992, at 1-2.

55. *Id.* at 2 (joint press statement issued after Blair House meeting). The timetable set was very optimistic as the statement referred to "detailed negotiations" on specific sectors or products in order to achieve "a substantial and balanced package."

relaunched.⁵⁶ Referring to the outcome of this meeting, the new GATT director general, Peter Sutherland, commented: "This has been a very positive result which clearly signalled an intent to put the conclusion of the Uruguay Round to the forefront of the political agenda during the coming months. The conclusion of the Round is now an acid test of world leadership."⁵⁷ Considerable progress was made in all areas, though in the November meeting of the Trade Negotiations Committee it was pointed out that there were remaining problems with tariffication and the provision for current and minimum access opportunities.⁵⁸ These outstanding issues were resolved; negotiations were finally completed; and the Uruguay Round was concluded on December 15, 1993.⁵⁹

A. THE AGREEMENT ON AGRICULTURE

The Uruguay Round was formally concluded by the Marrakech Declaration of April 15, 1994, adopted by the 124 governments and the European Community that had participated in the negotiations. The opening words of the Declaration state that: "Ministers salute the historic achievement represented by the conclusion of the Round, which they believe will strengthen the world economy and lead to more trade, investment, employment and income growth throughout the world."⁶⁰ In relation to agriculture, the Uruguay Round was a very historic achievement. Not only will there be strengthened and more operationally effective GATT rules, but also, there is to be an Agreement on Agriculture that will shape the future content of the agricultural policies of the contracting parties. Indeed, the preamble to the Agreement on Agriculture recalls the objectives set for the negotiations by both the Uruguay Declaration and the mid-term review. What is envisaged is the adoption of specific commitments in the areas of market access, domestic support, and export competition. This article now addresses each of these areas in turn.

B. MARKET ACCESS

The results of the market-access negotiations were recorded in the national schedule of concessions annexed to the Uruguay Round Protocol that forms an

56. In part, these renegotiations were due to the trade ministers of Canada, Japan, the United States, and the European Community who had resolved some of their outstanding differences on the issue of market access. In relation to agriculture, the four noted: "We look forward to immediate re-engagement of the multilateral negotiations to complete expeditiously the agricultural market access package, including processed products, as an essential component of the agriculture agreement and of a global and balanced Uruguay Round package." GATT FOCUS No. 101, Aug./Sept. 1993, at 3.

57. *Id.* at 2.

58. GATT FOCUS No. 103, Nov. 1993, at 2; *see* NEWS OF THE URUGUAY ROUND, *supra* note 1, NUR 076, Nov. 1993, at 5.

59. GATT FOCUS No. 104, Dec. 1993, at 1.

60. GATT FOCUS No. 107, May 1994, at 7.

integral part of the Final Act.⁶¹ In addition to the usual reductions in the levels of tariffs reflected in appendix IA of the Uruguay Round Protocol, there are also to be concessions on nontariff measures. These latter concessions are the result of the adoption of the process of tariffication that applies to nearly all types of nontariff barriers.⁶² The starting point for this process is the conversion of existing nontariff barriers into tariff barriers to provide for an equivalent level of protection. The average reduction for these tariffs over the duration of the agreement will reflect differential levels of development within the contracting parties; for developed contracting parties the average reduction is to be 36 percent over six years, whereas for developing countries contracting parties the average reduction is to be 24 percent to be implemented over a ten-year period. To reflect the comprehensive nature of the market-access negotiations all participating contracting parties are required to make minimum reductions on each tariff line. In reflection of their low level of development, the least developed contracting parties are not required to reduce their tariffs.

The process of tariffication also requires that existing access opportunities be maintained and in those cases where current access falls below 3 percent of domestic consumption, minimum access tariff quotas are to be established. These quotas are to be expanded over the implementation period. According to article 4:2 of the Agreement on Agriculture, "[m]embers shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties" except as authorized under article 5 and Annex 5. Annex 5 represents an attempt to counter concerns raised during the negotiations relating to the tariffication of nontariff barriers on particularly sensitive products. However, there are strict limits on the use of this special treatment:

- (a) imports of the designated products⁶³ comprised less than 3 percent of corresponding domestic consumption in "the base period";
- (b) no export subsidies have been provided since the beginning of the base period for the designated products;

61. Article 4:1 of the Agreement on Agriculture notes that "[m]arket access concessions contained in Schedules relate to bindings and reductions of tariffs and to other market access commitments as specified therein." Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Pt. III, Annex 1A, Agreements on Trade in Goods, Agreement on Agriculture, art. 4:1 [hereinafter Agreement on Agriculture].

62. According to a note to article 4:2 of the Agreement on Agriculture, the measures to be converted include "quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state trading enterprises, voluntary export restraints and similar border measures other than ordinary customs duties, whether or not the measures are maintained under country-specific derogations from the GATT 1947." Agreement on Agriculture, *supra* note 61, art. 4:2 n.1. Measures which will not be converted are limited to "measures maintained under balance-of-payments provisions or under other general, non-agriculture-specific provisions of the GATT 1994 or of the other Multilateral Trade Agreements in Annex 1A of the MTO." *Id.*

63. Agreement on Agriculture, *supra* note 7, annex 5, § A.1(a).

- (c) effective production restricting measures are applied to the primary agricultural product;
- (d) such products are designated with the symbol "ST-Annex 5" in Section IB of Part I of a Member's Schedule annexed to the Uruguay Round (1994) Protocol as being subject to special treatment reflecting factors of non-trade concerns, such as food security and environmental protection; and
- (e) minimum access opportunities in respect of the designated products correspond, . . . to 4 per cent of base period domestic consumption of the designated products from the beginning of the first year of the implementation period and, thereafter, are increased by 0.8 per cent of corresponding domestic consumption in the base period per year for the remainder of the implementation period.⁶⁴

The cumulative effect of these conditions indicates that there will be few exemptions from the full scope of the tariffication process. Even in the situation where the provisions of the annex can be used, minimum access opportunities will rise from 4 percent at the beginning of the implementation period to 8 percent at the end of the period.

Paragraph 6 of annex 5 allows a member to restrict access to a figure below 8 percent if the member decides to end the special treatment it has afforded to the designated product.⁶⁵ Should the member wish to continue affording special treatment to the designated product, the percentage shall be the subject of negotiations. These negotiations may allow for the continuation of the special treatment on the condition that the member provides additional and acceptable concessions. If special treatment is not continued after these negotiations, the minimum access opportunities at the end of the implementation period are to be maintained at 8 percent. An additional exception is provided for in section B of annex 5, which applies to "a primary agricultural product that is the predominant staple in the traditional diet of a developing country Member."⁶⁶ This exception is a further reflection of the special and differential treatment that the Uruguay Round has afforded developing countries.

Article 5 of the Agreement on Agriculture allows for special safeguard measures to be taken with respect to tariffied products if:

64. These are defined as "any primary agricultural product and its worked and/or prepared products." *Id.* § A.1.

65. Paragraph 2 of annex 5 states that if a member ceases to apply special treatment, "the Member concerned shall maintain the minimum access opportunities already in effect at such time and increase the minimum access opportunities by 0.4 per cent of corresponding domestic consumption in the base period per year for the remainder of the implementation period." Agreement on Agriculture, *supra* note 61, annex 5, § A.2. For example, if a member decides to end the special treatment at the beginning of the fourth year, by the end of the period the minimum access opportunities will be 7.2% (4% + 0.8% + 0.8% + 0.8% + 0.4% + 0.4%).

66. *Id.* annex 5, § B.7. The provisions of section B mirror those of section A. There are conditions on the use of the exception (minimum access opportunities and appropriate market access opportunities for other products), negotiations for the continuation of the exception, additional opportunities in the event of successful negotiations, and the consequences of the noncontinuation of the exception. *Id.* annex 5, § B.7-10.

(i) the volume of imports of that product entering the customs territory of the Member granting the concession during any year exceeds a trigger level⁶⁷ which relates to the existing market access opportunity . . . ; or, but not concurrently:

(ii) the price at which imports of that product may enter the customs territory of the Member granting the concession, as determined on the basis of the c.i.f. import price of the shipment concerned expressed in terms of its domestic currency, falls below a trigger price equal to the average 1986 to 1988 reference price for the product concerned.⁶⁸

The special safeguard measure envisaged by article 5 is the introduction of an additional duty. A strict schedule is established in article 5:5 detailing the amount of this additional duty, and it is only to be maintained until the end of the year in which it is imposed. In essence what article 5 provides is a specific safeguard measure for agriculture drafted in such a way that its application will be transparent.⁶⁹ The use of article XIX and the Agreement on Safeguards will no longer be applicable to safeguard measures in relation to market access for agricultural products.

If a comparison is made between the various negotiating positions of the main contracting parties and the results of the negotiations in the area of market access, it would appear that a landmark agreement has been reached in this area. The adoption of the concept of tariffication was undoubtedly a success for those who strongly advocated it, in particular the United States and the Cairns Group. Moreover, the problems identified with the concept, such as how to recognize nontrade concerns, for example food security, have also been rectified. While it may be argued that the minimum access opportunities are not set at a particularly high level, it must be remembered that the process of tariffication and the reduction of tariffs is necessarily a long-term process. In addition, specific safeguard measures, which would frustrate the process of reform, will only be adopted on satisfaction of very strict criteria. The products that may benefit from these measures must be flagged from a very early stage. The measures adopted will be temporary, and provision is made for consultation with affected contracting parties. These criteria and the overall transparency of the process will ensure that the process of liberalization is not derailed by such safeguard measures.

C. DOMESTIC SUPPORT

If the first part of the Agreement on Agriculture charts a new direction for agriculture in the GATT then the second part, which relates to domestic support,

67. *Id.* art. 5:1(i), (ii). In addition to these conditions, the agricultural product must also be designated in the member's schedule as being the subject of a concession in respect of which article 5 may be invoked.

68. The trigger level is defined in article 5:4 and varies according to the existing level of market opportunities. *Id.* art. 5:4.

69. This safeguard is specifically provided for. *See id.* art. 5:7. Additional conditions imposed on a member using this provision include the giving of notice, the provision of statistical information and the opportunity for consultations. *Id.*

truly signifies that the direction is towards a fair and market-oriented agricultural trading system. The centerpiece of the commitments in this area is the concept of the Aggregate Measurement of Support (AMS), which is defined in article 1(a) as "[the] annual level of support, expressed in monetary terms, provided for an agricultural product in favour of the producers of the basic agricultural product or nonproduct-specific support provided in favour of agricultural producers in general. . . ." Annex 3 to the Agreement gives detailed guidance on the calculation of the AMS. According to the provisions of this annex, the AMS is to be calculated on a product-specific basis for each product receiving any type of support that is not exempt from the reduction commitment. Further guidelines indicate that what is being attempted is the calculation of all those financial factors that influence a farmer to produce a certain product.⁷⁰ The reference period for the calculation of the external reference price, which is a significant factor in the calculation of market price support, is the period from 1986 to 1988.

Having calculated the AMS, the next step is to calculate the total AMS, as, in line with the negotiating positions of the contracting parties, there are a number of specific policies which need not be included within the commitment to reduce the total AMS. Annex 2, paragraph 1, to the Agreement states:

Domestic support policies for which exemption from the reduction commitments is claimed shall meet the fundamental requirement that they have no, or at most minimal, trade distortion effects or effects on production. Accordingly all policies for which exemption is claimed shall conform to the following basic criteria:

- (i) the support in question shall be provided through a publicly-funded government programme (including government revenue foregone) not involving transfers from consumers; and,
- (ii) the support in question shall not have the effect of providing price support to producers. . . .

The annex goes on to list twelve specific types of policies, the so-called green box policies, that will be excluded from the reduction commitment.⁷¹ If excluded, it is up to the member to ensure that such policies remain consistent with the requirements of annex 2; in the event that they do not, they will be included in future calculations of the total AMS.⁷² Further exclusions from the commitment

70. For example, the following factors are listed in annex 3: subsidies will include both budgetary outlays and revenue forgone by governments or their agents; specific agricultural levies or fees paid by producers are to be deducted from the AMS; the AMS will be calculated as close as practicable to the point of first sale of the product concerned. Agreement on Agriculture, *supra* note 61, pt. III, annex 3, §§ 2, 4, 7.

71. The twelve categories are: general services (for example research); public stockholding for food security purposes; domestic food aid; direct payments to producers; decoupled income support; government financial participation in income insurance and income safety-net programs; payments for relief from natural disasters; structural adjustment assistance provided through producer retirement programs; structural adjustment provided through resource retirement programs; structural adjustment assistance provided through investment aids; payments under environmental programs; and payments under regional assistance programs. *Id.* annex 2, §§ 2-13.

72. *Id.* art. 7:2(a).

can be found in articles 6:4 (de minimis provision)⁷³ and 6:5 (direct payments under production limiting programs).⁷⁴ In a related article, domestic support measures that fully conform to the provisions of annex 2 are nonactionable for the purposes of countervailing duties, exempt from actions based on article XVI of the GATT and part III of the Subsidies Agreement, and exempt from actions based on article II of the GATT. A similar exception is provided in article 13:2 for those domestic support measures that have been exempted under articles 6:4 and 6:5. Any consultations or disputes about these provisions are to be settled using the new dispute-settlement procedure.⁷⁵

The commitment of the members of the Agreement is to reduce the product-specific and non-product-specific support that does not qualify for exemption by 20 percent during the implementation period. A member will comply with the reduction commitment when in a particular year the level of domestic support provided to agricultural producers does not exceed the commitment specified in that member's schedule. Reflecting the differential treatment accorded to developing countries, the reduction commitment is set at 13.3 percent with no reduction being necessary for the least developed countries.⁷⁶ Developing countries also benefit in that investment subsidies and other agricultural input subsidies forming part of agricultural and rural development policies will be excluded from the calculation of the total AMS.

The significance of the reduction commitments of the members to the Agreement on Agriculture with respect to domestic support measures is that the first step has been taken towards the creation of a more competitive environment in agriculture. In contrast with the position initially adopted by the European Community, the concept of the AMS will not be used to provide for a rebalancing of support between products. The exclusion of certain categories of policies differs from the negotiating position of both the Cairns Group and the United States in that there are only two categories of policies. However, the rationale for the exclusion of certain policies will ensure no negative impact on trade liberalization. Moreover, the reduction in the level of domestic support will, in some contracting parties, lead to a reduction in the level of overproduction and

73. The de minimis provision allows a member to disregard domestic support that is either product-specific or non-product-specific where that support does not exceed a certain percentage of the value of total agricultural production. *Id.* art. 6:4(a). For developed country members that percentage is 5%, whereas it is 10% for developing country members. *Id.* art. 6:4(b).

74. This exception only applies if the payments are based on fixed areas and yields or are made on 85% or less of the base level of production or, if related to livestock, are made on a fixed number of head. *Id.* art. 6:5(a).

75. *Id.* art. 19.

76. OFFICE OF THE U.S. TRADE REPRESENTATIVE, FINAL ACT EMBODYING THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS, PART II, ANNEX 1A, AGREEMENTS ON TRADE IN GOODS, 2 URUGUAY ROUND PROTOCOL TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994, app. V, pt. IV, § 1 [hereinafter Uruguay Protocol].

consequently fewer exports of surplus production. This reduction in exports will further increase the stability of international agricultural markets.

D. EXPORT SUBSIDIES

Whereas the approach to domestic support is to outline those measures to be exempt from the reduction commitment, in relation to export subsidies the approach is to list those export subsidies subject to reduction commitments. Six specific examples are listed in article 9:1. As examples these include:

(a) The provision by governments or their agencies of direct subsidies, including payments-in-kind, to a firm, to an industry, to producers of an agricultural product, to a co-operative or other association of such producers, or to a marketing board, contingent on export performance.

(b) The sale or disposal for export by governments or their agencies of non-commercial stocks of agricultural products at a price lower than the comparable price charged for the like product to buyers in the domestic market.⁷⁷

These and the other examples relate mainly to the provision of direct export subsidies.

The export subsidy commitments undertaken by the members of the agreement may relate to budgetary outlay and export quantity.⁷⁸ For developed country members the commitment is to reduce the budgetary outlays of the export subsidies and the quantities benefiting from such subsidies, over the implementation period covered to a level 36 percent and 21 percent below the levels in the 1986-1990 base period. Provision is made in article 9:2(b) for members to grant export subsidies in excess of the corresponding annual commitment levels provided that certain conditions are satisfied.⁷⁹ To respect the principle of differential treatment for developing countries, the equivalent percentage reductions are to 24 percent and 14 percent over a ten-year period. As in other commitments under the Agreement, the least developed country members are not required to undertake reduction commitments. Additional differential treatment is provided for these countries as a number of prohibited export subsidies are exempt from the reduction commitment provided that such subsidies are not applied in a manner that would circumvent the reduction commitment.⁸⁰

77. Agreement on Agriculture, *supra* note 61, art. 9:1.

78. Uruguay Protocol, *supra* note 76, app. V, pt. IV, § II.

79. Agreement on Agriculture, *supra* note 61, art. 9:2(b). The conditions seek to ensure compliance with the reduction commitments allowing for an annual excess of up to 3% of the base period budgetary outlays and 1.75% of the base period quantities. The potential effect on the reduction process is limited by article 9:2(b)(iii), which states: "[T]he total cumulative amounts of budgetary outlays for such export subsidies and the quantities benefiting from such export subsidies over the entire implementation period are no greater than the totals that would have resulted from full compliance with the relevant annual commitment levels specified in the Member's Schedule." *Id.*

80. *Id.* art. 9:4. The specific export subsidies exempted are: the provision of subsidies to reduce the costs of marketing exports of agricultural products including handling, upgrading and other processing costs, and the costs of international transport and freight; and internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favorable than for domestic shipments. *Id.* art. 9:1(d), (e).

For those export subsidies that conform to the provisions of the Agreement there will be an exemption from actions based on article XVI of the GATT or articles 3, 5, and 6 of the Subsidies Agreement. Those export subsidies not covered by article 9:1 are not to be applied in a manner that results, or may result, in the "circumvention of the export subsidy commitments."⁸¹ These non-listed export subsidies will be subject to the Subsidies Agreement, which establishes three categories of subsidies: prohibited,⁸² actionable,⁸³ and nonactionable.⁸⁴ In addition, article 13:3(a) of the Agreement on Agriculture makes clear that subsidies covered by article 9:1 can continue to be subject to countervailing duties in limited circumstances. Article VI of the GATT and part V of the Subsidies Agreement may be invoked "upon a determination of injury or threat thereof based on volume, effect on prices, or consequent impact."⁸⁵ Finally, the obligation not to circumvent the reduction commitments also applies to noncommercial transactions. Article 10:4 states that members that donate international food aid must ensure:

(a) that the provision of international food aid is not tied directly or indirectly to commercial exports of agricultural products to recipient countries;

(b) that international food aid transactions, including bilateral food aid which is monetised, shall be carried out in accordance with the FAO "Principles of Surplus Disposal and Consultative Obligations" including, where appropriate, the system of Usual Marketing Requirements; and

(c) that such aid shall be provided to the extent possible in fully grant forms or on terms no less concessional than those provided for in article IV of the Food Aid Convention 1986.

The reduction commitments on both budgetary outlay on export subsidies and limits on the quantities that can benefit from such subsidies complete the charting of a new direction for agriculture. The call for the elimination of all export subsidies, for example in the negotiating position of the United States and the Cairns Group, has not been met. Export subsidies will continue to play a role in international agricultural trade; total elimination remains a long-term goal. Export subsidies will be subject to the discipline provided for in the Agreement

81. *Id.* art. 10:1. It can be assumed that article 19 on consultation and dispute settlement will be applicable in this case.

82. *Id.* art. 3. These subsidies are subject to a new dispute settlement procedure outlined in article 4, the main feature of which is an expedited timetable for action by the Dispute Settlement Body. *Id.* art. 4. Countermeasures will be authorized if the prohibited subsidy is not withdrawn within a specified period.

83. *Id.* art. 5 *passim*. These provide that such subsidies shall not have adverse impact on the interests of other signatories. *Id.* An adverse impact is defined as injury to a domestic industry, nullification or impairment of direct or indirect benefits arising under the GATT, or serious prejudice to the interests of another signatory. If the dispute settlement body determines that an adverse impact exists, the subsidy must be either withdrawn or the adverse effects removed. *Id.*

84. Agreement on Agriculture, *supra* note 61, art. 8 *passim*. If serious adverse effects to a domestic industry of a member arise from these subsidies, that member may seek a determination and recommendation from the committee. *Id.*

85. *Id.* art. 13:3(a).

in Agriculture; subsidies falling outside this discipline will be subject to the discipline provided by the Agreement on Subsidies and Countervailing Duties. One must remember that the commitment to reduce the level of export subsidies forms part of a package of measures for the reform of international trade in agricultural products. As noted above, the commitments on domestic support will lead to reduced production and, consequently, the level of production available for export. An assessment of the results of the Uruguay Round negotiations must, therefore, look at the overall package rather than attempt to criticize aspects of that package. This approach must also be the case for agriculture.

E. OTHER ISSUES

To complete the package on agriculture a number of other issues should be noted. The first of these issues is noted in article 14 of the Agreement on Agriculture, which urges the members to give effect to the Agreement on Sanitary and Phytosanitary Measures, that is measures considered "necessary to protect human, animal or plant life or health."⁸⁶ The negotiation of such an agreement formed part of the Uruguay Round Declaration on Agriculture and the mid-term review of the Round viewed harmonisation of regulations in this area as a long-term objective.

The Agreement eventually concluded confirms that members have the right to adopt these measures subject to the requirement that "they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade."⁸⁷ The members agree to "harmonize sanitary and phytosanitary measures on as wide a basis as possible . . . [using] international standards, guidelines and recommendations."⁸⁸ Under paragraph 11 of the Agreement the members are allowed to introduce higher standards if scientific justification exists for such measures or as a result of an assessment of risk using mechanisms developed by the relevant international organizations.⁸⁹ In addition to the obligation to harmonize international standards, the Agreement also endorses the principle of equivalence:

86. Agreement on Agriculture, *supra* note 61, pt. II, annex 1A (defining sanitary or phytosanitary measures).

87. *Id.*; see also *id.* §§ 5-8 (relating to the basic rights and obligations of the members).

88. *Id.* § 9. Section 12 of the Agreement states:

Members shall play a full part within the limits of their resources in the relevant international organizations and their subsidiary bodies . . . , and in international and regional organizations operating within the framework of the International Plant Protection Convention, to promote within these organizations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures.

89. *Id.* § 19. This latter ground for adopting higher standards is further developed in paragraphs 16 to 23 of the Agreement.

Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary and phytosanitary protection.⁹⁰

Provision exists for inspection, testing, and other relevant procedures. In addition, all members undertake to ensure the transparency of all measures adopted. In the event of disputes over the implementation of the Agreement, the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes will apply.

The Agreement also provides for special and differential treatment for developing countries, for example, in the form of longer time frames for compliance when new measures are introduced.⁹¹ Throughout the Agreements special and differential treatment is accorded to developing countries and even more favourable treatment to the least-developed countries.⁹² The special treatment accorded to the least-developed countries is further enhanced by the decision on measures concerning the possible negative effects of the reform program on least-developed and net food-importing developing countries. The decision recognizes that the implementation of the reform package in agriculture may have negative effects on these countries in relation to the supply of food imports on reasonable terms and conditions. These negative effects may be ameliorated through the provision of food aid, aid for agricultural development, and the possibility of assistance from the IMF and World Bank. The Committee on Agriculture, which is established by article 17 of the Agreement on Agriculture, is responsible for monitoring the follow up to this decision.⁹³

The final issue to be noted relates to the review of the commitments undertaken and the future of the reform process. According to article 18, the Committee on Agriculture will review the progress in the implementation of the commitments undertaken. The review process is to be undertaken on the basis of notification submitted by Members and any documentation requested by the WTO. Within this process members will have an opportunity to raise matters relevant to the implementation of the the reform program. The outcome of these reviews will undoubtedly form part of the continuation of the reform process. As article 20 notes: "Recognizing that the long-term objective of substantial progressive reductions in support and protection resulting in fundamental reform is an ongoing process, Members agree that negotiations for continuing the process will be initiated one year before the end of the implementation period. . . ." The negotiations will consider the experience and effects of the reduction commitments, nontrade concerns, and special and differential

90. *Id.* § 15.

91. For further details, see *id.* §§ 31-34.

92. Agreement on Agriculture, *supra* note 61, art. 15.

93. *Id.* arts 16:2, 17.

treatment accorded to developing countries. Other factors to be included in these negotiations involve a consideration of what further commitments are necessary to achieve the long-term objective of establishing a fair and market-oriented agricultural trading system. The Agreement on Agriculture is the start of the process of reform, and article 20 makes clear that this Agreement is merely the first step in a long-term process.

F. CONCLUSION

Rangarajan concluded:

Political will is not only a hazy and vague concept but it is an example of circular reasoning. All that is said is that an agreement *was not* concluded because it *could not* be concluded; it *did not* work because it *could not* work. The shorthand expression "lack of political will" hides a multitude of factors, which together determine why a solution, even if it is economically viable, cannot be politically implemented. Negotiations rarely fail because appropriate economic solutions are not available. Failures are either because the economic solutions are considered politically unfeasible or because the acceptable solutions are rendered obsolete by changing circumstances.⁹⁴

The exclusion of agricultural products and policies from the discipline that had characterized the GATT treatment of industrial products had been an act of political will by the major contracting parties. The political will to effect a fundamental change in the nature of the GATT as it applies to agriculture, so clearly absent in the previous rounds of multilateral negotiations, was clearly present during the Uruguay Round. This change was brought about because the true cost of the agricultural policies pursued by the main contracting parties was no longer supportable.⁹⁵ The Agreement on Agriculture is the beginning of an adjustment process for the agricultural policies of the contracting parties, which is in essence an attempt to reduce the cost of domestic agricultural policies and their protectionist effects.

A legal framework has been provided for the long-term reform of agricultural trade and the domestic policies of the contracting parties. As article 20 of the Agreement on Agriculture makes clear, reform is to be an ongoing process. The GATT, and the new WTO, must ensure that there will be a continuing political will to continue this reform process. This will involve demonstrating the benefits of the Agreement on Agriculture to consumers and producers, and to both developed and developing countries. As the director-general of the GATT commented:

The Uruguay Round will lead to a substantial improvement in the sustainability of agricultural markets. A broader market resulting from gradual improvements in access, along with stricter rules on trade, should lead to a more predictable environment for investment decisions in which all elements of the agri-food economy can thrive. Farmers

94. L. N. RANGARAJAN, *COMMODITY CONFLICT* 48 (1978).

95. See OECD, *AGRICULTURAL POLICIES, MARKETS AND TRADE* (1988).

should be able to develop a longer term view of their business prospects than has been the case in recent years. They should again be in a position to supply goods that the market needs rather than witness the tragic waste of producing stockpiles. Processors will be able to plan ahead with more certainty and with greater efficiency through the reduction of the implicit tax on primary inputs. Less volatile markets will enable exporters and importers to increase business opportunities at lower levels of risk.⁹⁶

If this conclusion is validated by the experience over the next few years, then indeed a new direction has been charted for agriculture in the GATT, and the political will that led to the conclusion of the Agreement on Agriculture will ensure the continuation of the reform process.

96. *Uruguay Round to Bring New Opportunities, Independence and Sustainable Markets to Farmers*, NEWS OF THE URUGUAY ROUND, *supra* note 1, NUR 065, Sept. 1993, at 9.